

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Peter Bauer et al.
Application Number: 10/543,118
Filing Date: March 31, 2006
Group Art Unit: 3637
Examiner: Hanh Van Tran
Title: REFRIGERATING APPLIANCE AND DOOR FOR ONE
SUCH APPLIANCE

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Commissioner for Patents
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APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellants hereby file an Appeal Brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH. The application and the invention disclosed in the application were assigned to BSH Bosch Und Siemens Hausgerate GMBH by virtue of an Assignment executed on August 9, 2005, August 15, 2005, August 23, 2005 and September 8, 2005, which is recorded at Reel 17373, Frame 584 of the U.S. Patent & Trademark Assignment Records, effective March 28, 2006.

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 15-18, 20-24 and 27-36 are pending and stand rejected. Claims 1-14, 19, 25 and 26 have been canceled. The final rejections of claims 15-18, 20-24 and 27-36 are being appealed.

(4) STATUS OF AMENDMENTS

All Amendments, with the exception of the Amendment filed March 25, 2010, have been entered.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

A description of the subject matter recited in the pending claims that are argued separately is set forth below, along with an indication of the portions of the specification and drawings that provide support for these features. Also, the reference numbers embedded in the following descriptions correspond to the reference numbers appearing the drawings.

A. Claim 15

Claim 15 is directed to a door for a refrigerating appliance 1, the refrigerating appliance having a body with a front side extending between an upper front edge and a lower front edge, an opening formed in the front side that is closable by a door, and a control panel 17 mounted on the upper front edge of the front side of the body. These features of claim 15 are illustrated in Figures 1, 4, 6 and 9 of the application. These features are also discussed in the specification between page 4, line 30 and page 5, line 7.

Claim 15 recites that the door includes an outer wall 3 and an inner wall 9, and that the outer wall and inner wall are interconnected along their longitudinal and transverse edges forming a space 12 therebetween to form a depth of the door. These features of claim 15 are illustrated in Figures 1 and 2 of the application. These features are also discussed in the specification between page 4, line 30 and page 5, line 7.

Claim 15 further recites that the door includes an upper end element 5 that is attached to an upper transverse edge of the door. The upper end element 5 includes a plate 7 extending horizontally between the inner 9 and outer 3 walls across the depth of the door. These features are illustrated in Figure 2 of the application. These features are also discussed in the specification at page 5, lines 9-15.

Claim 15 also recites that the upper end element 5 includes an outer wall piece 11 that extends upward from a front edge of the plate 7, wherein a grasping aperture is formed between a rear side of the outer wall piece and an upper surface of the plate. These features are illustrated in Figures 1 and 2 of the application, and they are discussed in the specification at page 5, lines 9-15.

Finally, claim 15 recites that the door also includes a viewing window 13 that is formed in the outer wall piece 11, the viewing window 13 allowing a user visual access to a space behind the viewing window. Embodiments including these features are illustrated in Figures 1, 4, 6 and 9 of the application. These features are also discussed at page 5, lines 17-27.

B. Claim 23

Claim 23 depends from claims 20 and 15. Claim 23 recites that the door includes an at least partially transparent pane 14 arranged in the viewing window 13. Claim 23 goes on to recite that the outer wall 3 of the door is arched at least in the area of said viewing window 13, and said pane 14 is mounted under pre-stress. These features of claim 23 are illustrated in Figures 6-8 of the application. In addition, these features are discussed in the specification at page 3, lines 6-13, and between page 6, line 30 and page 7, line 16.

C. Independent Claim 28

Claim 28 is directed to a refrigerating appliance including a body 1. Claim 28 recites that a door 2 abuts the body 1 in a closed position. Claim 28 also recites that the door 2 has an upper transverse edge. Claim 28 recites that a display element 17 is mounted at an upper front edge of the body 1. These features are illustrated in Figures 1, 4, 6 and 8 of the application. These features are also discussed in the specification between page 4, line 30 and page 5, line 7.

Claim 28 further recites a viewing window 13 forming said upper transverse edge of said door 2. Claim 28 recites that the viewing window 13 is oriented such that said display element 17 is visible when said door is closed. These features are illustrated in Figures 1, 4, 6 and 9 of the application. In addition, these features are discussed in the specification on page 5, lines 17-27.

D. Claim 36

Claim 36 is also directed to a refrigerator appliance. Claim 36 recites a body 1 with a backside, a front side extending between an upper front edge and a lower front edge, and the body also including an opening formed in the front side, and a top surface extending to and between the back side and the front side. These features of claim 36 are illustrated in Figures 1, 4, 6 and 9 of the application. These features are also discussed in the specification between page 4, line 30 and page 5, line 7.

Claim 36 further recites a control panel 17 mounted on the upper front edge of the front side of the body, the control panel 17 extending to a height such that no portion of the control panel 17 extends higher than the top surface extending to and between the back side and the front side of the body. These features of claim 36 are illustrated in Figures 1, 4, 6 and 9 of the application. These features are also discussed in the specification at page 5, lines 29-34.

Claim 36 also recites that the refrigerator appliance includes a door 2, the door being operable to close off the opening formed in the front side of the body, and the door 2 having an outer wall 3 and an inner wall 9. Claim 36 recites that the outer wall 3 and the inner wall 9 are interconnected along their longitudinal and transverse edges forming a space therebetween to form a depth for the door. These features are illustrated in Figure 2 of the application. These features are also discussed in the specification at page 5, lines 9-15.

Claim 36 further recites that a grasping aperture is formed on the top edge of the door, the grasping aperture extending across almost the entire width of the door, and the upper transverse edge of the door being formed with a viewing window 13 extending over the depth of the door. Claim 36 recites that the door covers the body of the refrigerating appliance to its upper edge, and that the control panel 17 mounted on the upper front edge of the front side of the body of the refrigerating appliance is visible through the viewing window 13. These features are illustrated in Figures 1, 4, 6 and 9 of the application. In addition, these features are discussed in the specification on page 5, lines 9-27.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether new matter was added to the Specification by the Amendment filed on October 5, 2009.

B. Whether claims 15-18, 20-24, 27, 35 and 36 fail to comply with the written description requirement of 35 USC §112, first paragraph.

- C. Whether claim 36 is definite under 35 USC §112, second paragraph.
- D. Whether claims 28-31 and 33 are anticipated under 35 USC §102(e) by PCT Publication No. WO 02/065036 to Bukulmez et al. (hereinafter "Bukulmez").
- E. Whether claim 32 is obvious under 35 USC §103(a) over Bukulmez.
- F. Whether claim 34 is obvious under 35 USC §103(a) over Bukulmez, in view of German Patent No. 9218613 to Licentia (hereinafter "Licentia").
- G. Whether claims 15-17, 20-24 and 35 are obvious under 35 USC §103(a) over US Patent No. 6,827,410 to Antos et al. (hereinafter "Antos"), in view of Bukulmez.
- H. Whether claim 27 is obvious under 35 USC §103(a) over Antos, in view of Bukulmez, and further in view of Licentia.
- I. Whether claim 36 is obvious under 35 USC §103(a) over Antos, in view of Bukulmez, and further in view of US Patent No. 6,101,819 to Onaka et al. (hereinafter "Onaka") and US Patent No. 7,031,144 to Carter et al. (hereinafter "Carter").

(7) ARGUMENT

A. The New Matter Objection, and the
Rejection Under 35 USC §112, First Paragraph

The January 7, 2010 Office Action objected to the Amendment filed on October 5, 2009, under 35 USC §132(a), because the Amendment allegedly added new matter to the application. The Office Action also rejected claims 15-18, 20-24, 27, 35 and 36 under 35 USC §112, first paragraph, as allegedly failing to comply with the written

description requirement. For the reasons provided below, it is respectfully submitted that the objection and the rejection are improper and should be withdrawn.

In an Amendment filed October 5, 2009, Applicants amended Figures 1 and 3 of the application to include reference numeral 40, which identifies a recess formed between the rear side of the outer wall piece 11 and an upper side of the plate 7 provided on the upper end element 5 of the refrigerator door illustrated in Figures 1-3. In addition, the specification was amended to identify this recess, and also to indicate that the recess 40 could be grasped by a user to open and close the door.

Applicants note that the originally filed application included Figures 1-6, 8 and 9, all of which clearly show a recess formed at a top of a refrigerator door. As is clear in these figures, the recess is formed between the rear side of the outer wall piece 11 and an upper surface of the plate 7. These figures also show that the recess extends across almost the entire width of the top of the door.

Because the recess has always been illustrated in the drawings, amending the specification to recite that the recess exists cannot be considered the addition of new matter to the application. Likewise, adding a reference number to Figures 1 and 3 to identify the recess cannot be considered the addition of new matter to the application.

It appears that the Examiner is objecting to the specification and rejecting claims under §112, first paragraph, because the application and the claims recite that the recess can be grasped by a user to open and close the door. Also, the comments in the Office Action also suggest that reciting that the aperture can be grasped by a user to open and close the door is improper because a separate handle is also shown on the front of the door.

It is respectfully submitted that it is extremely well known to those of ordinary skill in the art that an aperture placed on the top of a refrigerator door would typically be used to open and close the door. The fact that an additional handle may also be located on the front of the door does nothing to change this fact.

As support for the proposition that those of ordinary skill in the art know that such recesses are used to open and close the door of a refrigerator, Applicants point to one of the prior art references used by the Examiner to reject the claims, US Patent

Publication No. 2003/0038139 to Antos et al. (hereinafter "Antos"). Antos is also directed to a refrigerator with a door, the door having a recess at the top. Antos discloses that the recess formed on the top of the refrigerator door can be grasped by a user to easily open and close the door. See Antos at paragraph 35.

Applicants also note that the Antos refrigerator includes a separate handle 78 which can also be grasped by a user to open and close the refrigerator door. Thus, the existence of a separate handle was not a reason for Antos to conclude that the recess at the top of the door would never be used to open and close the door. In fact, quite the opposite. Antos clearly contemplated that either or both of the handle 78 and the recess would be used to open and close the door.

Because the originally filed drawings of this application very clearly disclose the existence of a recess now identified with reference numeral 40, because the vast majority of the language added to the specification merely describes what is shown in the drawings, and because one of ordinary skill in the art would know that such a recess is used to open and close a refrigerator door, is respectfully submitted that the language added to the specification did not add any new matter to the application. For similar reasons, it is also respectfully submitted that claims which recite a grasping recess formed on the top of a refrigerator door are fully supported by the originally filed drawings. In other words, one of ordinary skill in the art, viewing the originally filed drawings, would readily understand that that the recess provided at the top of the refrigerator door, as illustrated in most of the drawing figures of the application, could be grasped by a user to open and close the door.

For all of the above reasons, withdrawal of the objection to the specification and the rejection under 35 USC §112, first paragraph, are respectfully requested.

B. Claim 36 is Definite

Claim 36 was rejected under 35 USC §112, second paragraph, as allegedly indefinite. For the reasons provided below, it is respectfully submitted that the rejection is improper and should be withdrawn.

Claim 36 recites that the door of the refrigerator appliance includes a grasping aperture that is formed at a top edge of the door, the grasping aperture extending across almost an entire width of the door. The Office Action objects to this language of claim 36 and alleges that the language is indefinite.

The grasping aperture is clearly illustrated in at least Figures 1, 4, 6 and 9 of the originally filed application. As noted above, the grasping aperture is now identified with reference numeral 40 in Figures 1 and 3. Figures 1, 4, 6 and 9 also clearly indicate that the grasping aperture extends across almost an entire width of the door. Given the clear disclosure of the location and size of the grasping aperture by the originally filed drawings, it is respectfully submitted that this claim language appearing in claim 36 is definite.

The Office Action also alleges that the recitation of "the upper transverse edge of the door being formed with a viewing window" is indefinite because there is no antecedent basis for "the upper transverse edge." Applicants note that the transverse edges of the door are recited earlier in claim 36 at line 11. Accordingly, it is respectfully submitted that antecedent basis for this feature exists within claim 36.

In view of all of the foregoing, it is respectfully submitted that the rejection of claim 36 under 35 USC §112, second paragraph, should be withdrawn.

C. Claims 28-34 Are Allowable

The Office Action rejects claims 28-31 and 33 under 35 USC §102(e) over Bukulmez. The Office Action also rejects claim 32 under 35 USC §103(a) over Bukulmez. Further, the Office Action rejects claim 34 under 35 USC §103(a) over Bukulmez, in view of Licentia. For the reasons provided below, it is respectfully submitted that the rejections are improper and should be withdrawn.

Claim 28 is directed to a refrigerating appliance including a body, the appliance also including a door abutting the body in a closed position, the door having an upper transverse edge. Claim 28 recites a display element mounted at an upper front edge of the body. Claim 28 also recites a viewing window forming said upper transverse edge

of the door, wherein the viewing window is oriented such that said display element is visible when said door is closed.

The Bukulmez reference discloses a refrigerator having a body, where a door 2 abuts the body 1 in a closed position. Bukulmez also discloses that a display element 3 is mounted on the refrigerator. However, Bukulmez clearly discloses that the display element 3 is mounted on the top of the body, not on the front edge of the body.

As noted above, claim 28 recites that the display element is mounted on the front edge of the body, not on the top of the body. For at least these reasons, it is respectfully submitted that claim 28 is allowable. Claims 29-33 depend from claim 28 and are allowable for all the same reasons.

Claim 34 depends from claim 28 and is allowable over Bukulmez for all the reasons discussed above. In addition, the Licentia reference fails to cure the deficiencies of Bukulmez. Accordingly, it is respectfully submitted that claim 34 is allowable over Bukulmez and Licentia for all the reasons discussed above in connection with claim 28 and for the additional features which it recites.

In view of all the foregoing, withdrawal of the rejections of claims 28-34 is respectfully requested.

D. Claims 15-17, 20-24, 27 and 35 Are Allowable

The Office Action rejects claims 15-17, 20-24 and 35 under 35 USC §103(a) over Antos, in view of Bukulmez. The Office Action also rejects claim 27 under 35 USC §103(a) over Antos, in view of Bukulmez, and further in view of Licentia. For the reasons provided below, it is respectfully submitted that the rejections are improper and should be withdrawn.

To begin with, it is respectfully submitted that the combination of Antos and Bukulmez is improper.

As noted above, the Bukulmez reference discloses a refrigerator which includes a display element 3 mounted on the top of the refrigerator. A door panel 9 is mounted on the top of the door 2 of the refrigerator. A window 13 is provided within the door

panel 9 so that a display screen 6 of the indicator 3 is visible through the door panel 9 when the door 2 is closed.

The Antos reference also discloses a refrigerator. As illustrated in Figures 1A and 1B of that reference, various control elements 16 are located on a control panel 20 which is mounted on the top surface of the refrigerator. Antos discloses that indicator lights on the control panel 20 can be distracting to users of the refrigerator, particularly at night when such indicator lights would glow brightly. For this reason, Antos teaches that it is desirable to mount a cap 28 on the top edge of the door 12 to visually block any illuminated display elements on the control panel 20. Thus, Antos specifically teaches that if a control panel is mounted on top of a refrigerator, one should attempt to visually block the control panel when the door of a refrigerator is closed. See Antos at paragraphs 2, 6, 7, 13, and 35.

The Office Action appears to suggest that one of ordinary skill in the art would have found it obvious to modify the Bukuimez refrigerator to include a cap element as illustrated in Antos. Applicant respectfully disagrees.

As explained throughout the Bukuimez reference, the cap element attached to the top of Bukuimez' door is specifically designed to include a window so that the control panel mounted on the top of the Bukuimez refrigerator can be seen when the door of the refrigerator is closed. Modifying the door of the Bukuimez refrigerator to include a cap as disclosed in Antos would make it impossible for a user to view the control panel of the Bukuimez refrigerator. Accordingly, modifying Bukuimez based on the teachings of Antos would destroy the functionality of the Bukuimez invention.

Likewise, if one were to modify the Antos refrigerator to include an end cap as illustrated in Bukuimez, one would be able to view the indicator lights of a control panel mounted on the top of Antos' refrigerator. And this would destroy the utility of Antos' end cap.

For all of the above reasons, it is respectfully submitted that one of ordinary skill in the art would not have modified Bukuimez to include Antos' end cap. Moreover, it is respectfully submitted that one of ordinary skill in the art would not have modified the

Antos refrigerator to include the Bukulmez end cap. Making either substitution would destroy the utility of the base reference.

In view of all the foregoing, it is respectfully submitted that the combination of Antos and Bukulmez is improper. Withdrawal of the rejections of claims 15-17, 20-24, 27 and 35 on these grounds alone is respectfully requested.

1. Claims 15-17, 20-22, 24, 27 and 35

Moreover, even the improper combination of Bukulmez and Antos fails to result in a door for a refrigerating appliance as recited in claim 15. Claim 15 recites that the door includes an upper end element which is attached to an upper transverse edge of the door. Claim 15 recites that the upper end element includes a plate 7 extending horizontally between inner and outer walls of the door across the depth of the door.

The Office Action asserts that the Antos reference discloses an upper end element having a plate as recited in claim 15. As support for this position, the Office Action points to the horizontal portion extending between vertical member 36 and vertical member 46, as illustrated in Figure 5 of Antos. Applicants acknowledge that a horizontal portion does exist at this location in the Antos device. However, this horizontal portion does not extend horizontally between the inner and outer walls across the depth of the door. In fact, it appears that this horizontal portion would extend less than half of the distance between the inner and outer walls of the door.

The Bukulmez reference also fails to disclose or suggest that the door panel 9 mounted on the top of the door 2 of the Bukulmez refrigerator includes any type of plate extending horizontally between the inner and outer walls.

Because Antos and Bukulmez fail to disclose the above discussed features of claim 15, it is respectfully submitted that claim 15 is allowable. Claims 16, 17, 20-22, 24, 27 and 35 depend from independent claim 15 and are allowable for the same reasons, and for the additional features which they recite. Applicants note that the Licentia reference used to reject claim 27 also fails to disclose this feature.

2. Claim 23

Claim 23 depends from claims 15 and 20. Claim 23 recites that an at least partially transparent pane is arranged in the viewing window of the door. Claim 23 also recites that the outer wall is arched at least in the area of said viewing window, and that said pane is mounted under pre-stress.

Neither Antos nor Bukulmez disclose or suggest that a pane mounted in a viewing window of a refrigerator door would be mounted under pre-stress. It is respectfully submitted that claim 23 is allowable for these additional reasons.

In view of all of the foregoing, withdrawal of the rejection of claims 15-17, 20-24, 27 and 35 is respectfully requested.

E. Claim 36 is Allowable

The Office Action rejects claim 36 under 35 USC §103(a) over Antos, in view of Bukulmez, and further in view of Onaka and Carter. For the reasons provided below, it is respectfully submitted that the rejection is improper and should be withdrawn.

As noted above, it is respectfully submitted that the combination of the Antos reference with the Bukulmez reference is improper. Withdrawal of the rejection of claim 36 on these grounds alone is respectfully requested.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejections.

Respectfully submitted,

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CLAIMS APPENDIX

1-14 (Canceled).

15. (Rejected) A door for a refrigerating appliance, the refrigerator appliance having a body with a front side extending between an upper front edge and a lower front edge, an opening formed in the front side that is closeable by a door, and a control panel mounted on the upper front edge of the front side of the body, the door comprising:
- an outer wall;
 - an inner wall;
- said outer wall and said inner wall interconnected along their longitudinal and transverse edges forming a space therebetween to form a depth for the door;
- an upper end element being attached to an upper transverse edge of the door, the upper end element including a plate extending horizontally between the inner and outer walls across the depth of the door and an outer wall piece that extends upward from a front edge of the plate, wherein a grasping recess is formed between a rear side of the outer wall piece and an upper surface of the plate, and wherein
- a viewing window is formed in the outer wall piece, the viewing window allowing a user visual access to a space behind the viewing window.
16. (Rejected) The door according to claim 15, having a rectangular outline and a pair of shorter rectangular sides and a pair of longer rectangular sides joining said shorter sides into said rectangular outline, wherein said viewing window is formed on one of said shorter rectangular sides of said door serving as said upper transverse edge.

17. (Rejected) The door according to claim 15, including a transverse edge of said outer wall and a corresponding transverse edge of said inner wall lie opposite one another and wherein said viewing window allows a user visual access over said depth of said door.
18. (Rejected) The door according to claim 17, wherein an upper edge of the outer wall extends upward across an outer side of the outer wall piece, and wherein said upper transverse edge of said outer wall has a viewing window formed therein corresponding to the viewing window formed in the outer wall piece.
19. (Canceled).
20. (Rejected) The door according to claim 15, including an at least partially transparent pane arranged in said viewing window.
21. (Rejected) The door according to claim 20, including said pane formed integrally with said end element.
22. (Rejected) The door according to claim 20, wherein said pane is inserted in the viewing window formed in the outer wall piece.
23. (Rejected) The door according to claim 20, including said outer wall is arched at least in the area of said viewing window and said pane mounted under pre-stress.
24. (Rejected) The door according to claim 20, including locating means for acting centrally on said pane for locating said pane on said door.
25. (Canceled).

26. (Canceled).
27. (Rejected) The door according to claim 20, including a non-transparent decoration formed at least on a portion of the back of said pane.
28. (Rejected) A refrigerating appliance including a body, comprising:
a door abutting the body in a closed position, said door having an upper transverse edge;
a display element mounted at an upper front edge of the body; and
a viewing window forming said upper transverse edge of said door; and
said viewing window oriented such that said display element is visible when said door is closed.
29. (Rejected) The appliance according to claim 28, including said door having an outer wall and an inner wall, with said outer wall and said inner wall interconnected along their longitudinal and transverse edges forming a space therebetween to form a depth for said door, and one transverse edge formed with said viewing window extending over said depth of said door.
30. (Rejected) The door according to claim 28, including a first end element affixed to the edge of said outer wall and an edge of said inner wall, said first end element and said outer and inner walls define an insulating intermediate space, said first end element following the contour of said viewing window.
31. (Rejected) The door according to claim 30, including an at least partially transparent pane arranged in said viewing window.
32. (Rejected) The door according to claim 31, including said pane formed integrally with said first end element.

33. (Rejected) The door according to claim 31, including said pane formed from at least one of a highly transparent material and an at least partially opaque material.
34. (Rejected) The door according to claim 31, including a non-transparent decoration formed at least on a portion of the back of said pane.
35. (Rejected) The door according to claim 20, including said pane formed from a selected one of a highly transparent material and an at least partially opaque material.
36. (Rejected) A refrigerator appliance comprising:
 - a body with a back side, a front side extending between an upper front edge and a lower front edge, an opening formed in the front side, and a top surface extending to and between the back side and the front side,
 - a control panel mounted on the upper front edge of the front side of the body, the control panel extending to a height such that no portion of the control panel extends higher than the top surface extending to and between the back side and the front side; and
 - a door, the door being operable to close off the opening formed in the front side of the body and the door having an outer wall, an inner wall, the outer wall and the inner wall interconnected along their longitudinal and transverse edges forming a space therebetween to form a depth for the door, a grasping aperture being formed in a top edge of the door, the grasping aperture extending across almost an entire width of the door, and the upper transverse edge of the door being formed with a viewing window extending over the depth of the door, wherein the door covers the body of the refrigerating appliance to its upper edge and wherein the control panel mounted on the upper front edge of the front side of the body of the refrigerating appliance is visible through the viewing window.

EVIDENCE APPENDIX

NONE

RELATED PROCEEDINGS APPENDIX

None